

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

SUSANA DIAZ, As Next Best Friend
And Personal Representative of
Yvette D., a Minor,

Plaintiff,

v.

No. 14-CV-00497 RB/SMV

LAS CRUCES PUBLIC SCHOOLS and
XAVIER AVALOS, Individually and in his
Capacity as an employee of Las Cruces Public
Schools,

Defendants.

ORDER APPOINTING GUARDIAN AD LITEM

THIS MATTER having come before the Court for the appointment of a *Guardian Ad Litem* to assist the Court in evaluating a proposed settlement of this pending litigation, the Court having reviewed the file and being otherwise fully advised, hereby finds:

1. A *Guardian Ad Litem* should be appointed by this Court in connection with the Court's approval of a settlement involving Yvette D., a minor.
2. The *Guardian Ad Litem* should be appointed to investigate on behalf of the Court into the fairness and reasonableness of any settlement and its effect on the minor.
3. The *Guardian Ad Litem's* appointment does not contemplate representation of the minor as an advocate, but only as a functionary of the Court.
4. The *Guardian Ad Litem's* responsibilities under this appointment are to the Court, and not to the child. The child in this matter is already represented by competent counsel, and the *Guardian Ad Litem* under this appointment should not be requested to invade or interfere with the child's counsel's responsibility to adequately and effectively represent the child.

5. There are strong public policy reasons to grant immunity to the *Guardian Ad Litem* in this case, who is acting as an "Arm of the Court" and is performing an essential role in this Court's Administration of Justice, as the Judge's assistant.

6. All immunities and privileges available to the *Guardian Ad Litem*, as articulated by the New Mexico Supreme Court in Collins v. Tabet, 111 N.M. 391, 806 P.2d 40 (1991) should be extended to the *Guardian Ad Litem* in this matter.

7. Gabrielle M. Valdez, Esq. is qualified to perform as a *Guardian Ad Litem* in this matter.

8. The reasonable fees for the *Guardian Ad Litem* shall be paid by Defendants.


9. As the Court appointed *Guardian Ad Litem*, Gabrielle M. Valdez, Esq. shall be deemed a party entitled to participate, to have notice of all proceedings, and to receive copies of all pleadings and correspondence among the parties.

10. The *Guardian Ad Litem* shall be discharged from her duties as *Guardian Ad Litem* upon settlement and conclusion of any litigation herein.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Gabrielle M. Valdez, Esq. shall be appointed *Guardian Ad Litem* as an "Arm of the Court", appointed in connection with this Court's consideration of a settlement involving minor children, and shall be absolutely immune from any liability for her actions taken pursuant to this appointment, in so far as her conduct in the case is as a result of an investigation on behalf of this Court into the fairness and reasonableness of any settlement, the manner in which any settlement monies will be held or used on behalf of the minor child, and in its effect on the minor child.

The *Guardian Ad Litem's* duties and obligations in this Court are owed to the Court, and not to the minor child.

This appointment of Gabrielle M. Valdez, Esq. as *Guardian Ad Litem* is intended to convey upon her in all of the immunities and protections allowed or provided under Collins v. Tabet, 111 N.M. 391, 806 P.2d 40 (1991).



The Honorable Stephan M. Vidmar
Magistrate Judge

APPROVED BY:

DANIA R. JOHNSON
CHARLES MCELHINNEY

Approved on 7/2/2014

Dania R. Johnson
Charles McElhinney
Attorneys for Plaintiff

GERMAN & ASSOCIATES, LLC.

/s/ Jason M. Burnette

Jason M. Burnette
Elizabeth L. German
German & Associates, LLC
Attorneys for Defendants